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ABSTRACT

Using extensive legal documentation, including general laws, the Wisconsin and Federal Constitution, court cases, and legislation, this paper discusses the authority and purpose of the Wisconsin State Universities, how this authority is exerted over students, and whether these acts of authority are legal and conform with the stated purposes. Specifically, the paper examines the establishment of Wisconsin normal schools and departments, the legislative delineation of the primary purposes and objects of the State Universities, the Board of Regents regulations over students in terms of admission, fees and tuition, curricula, and graduation requirements, court decisions that sustain the authority of colleges and universities to establish curricula and set degree requirements, rules establishing college authority over extracurricular and cocurricular activities of students, court decisions that hold that in loco parentis no longer applies to state universities, and the exercise of institutional authority through the control of parking space and other physical facilities. (AF)

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Wisconsin State Universities:

Purpose, and Exercise of Authority Over Students

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What is the authority and purpose of the Wisconsin State Universities? How is the authority exerted over its students? Are the acts of authority legal and do they conform with the purpose?

The Wisconsin State Universities,[1] formerly "Colleges",[2] "Teachers Colleges",[3] and "Normal Schools",[4] are agencies of the state of Wisconsin,[5] constituted by the state Legislature[6] and governed by the Board of Regents,[7] "a body corporate."[8] Although education must be provided for in a manner consistent with federal constitutional requirements,[9] it is primarily the concern and responsibility of the "states respectively, or. . . the people."[10] By adopting a state constitution, the people both grant and limit the power and authority of the legislature.[11] The state legislature has the right to establish and maintain schools[12] even though not expressly provided for in the state Constitution.[13] The legislature delegates authority "to make all by-laws and needful rules and regulations. . ." to the Board of Regents,[14] and the courts will interfere only if they are unreasonably arbitrary, capricious, malicious, or oppressive.[15] The Board of Regents, in turn, confers authority on the presidents[16] (see Appendix A) and, for that matter, on all their employees.[17]

The normal schools and departments[18] in Wisconsin were established in response to the excess of demand for teachers over the supply.[19] Even those who, like John Hawkins Rountree, opposed the public support of normal schools[20] agreed that their purpose was to educate teachers.[21] That the function of universities is to "impart learning and to advance the

boundaries of knowledge"[22] is so widely recognized that it hardly bears repeating, nonetheless, the purpose of the Wisconsin State Universities has been stated and restated in the laws and statutes as the "instruction and training of students in the theory and art of teaching, and in the various branches that pertain to a good common school education,[23] and in all subjects needful to qualify for teaching in the public schools. . .[24] in the fundamental laws of the United States and of this state in what regards the rights and duties of citizens. . .[25] in agriculture, chemistry, the arts of husbandry. . . the mechanic arts. . .[26], in liberal arts. . .,[27] industrial arts. . . home economics. . .household arts. . . industrial education. . . vocational education. . . home economics education. . . industrial technology. . . professional engineering. . . mining and civil engineering. . .[28] cooperative marketing. . . consumers' cooperative. . . conservation of natural resources. . .[29] and agricultural economics.[30]

The reasons compelling the legislature to make this detailed delineation of "the primary purposes and objects" of the State Universities are varied and interesting, but, alas, not the subject of this paper. We may however note selections from the most recent university statements of philosophy and purpose (edified and abbreviated):

> Eau Claire: "dedicated to achieving excellence. . . through distinguished teaching conducted in a democratic atmosphere of intellectual development and with a curriculum designed to meet the needs and interests of a changing society. . . to instill a love of learning. . . the program emphasizes the cultural heritage. . . stresses the power and beauty of imagination. . . usefulness of critical judgment. . . thoughtful and skillful interchange of ideas. . . preciseness of information, thoroughness of understanding, competence in the use of appropriate research techniques, and an appreciation of the relationships between the individual course and other fields of learning." 31

La Crosse: "to equip its students with a broader and deeper knowledge of themselves and the world in which they live. . . to attain mastery of special fields of learning. . ." 32

Oshkosh: "to educate. . . students. . . by helping them to select, define, preserve, implement, and refine the ideals, skills, and other knowledges upon which our civilization rests. These include beliefs in the dignity and integrity of the individual, concern for the democratic processes and obligations of citizenship, respect for wisdom and scholarship, the cultivation of self-discipline and inner resources, a comprehension of our cultural inheritance, and ability to apply the tools of truth, particularly those of science and reason." 33

Platteville: "to serve the community of which it is a part, the people of Wisconsin and the nation by providing an educational program to the students who show ability to benefit. . . achieve a higher level of economic efficiency. . . participate more effectively in perpetuating our American form of democracy." 34

River Falls: "The University believes it must serve as a center for those who search for truth -- that it must maintain an atmosphere of free inquiry in which the examination of conflicting ideas and ideals is not only permitted but encouraged." 35

Stevens Point: "to provide opportunities in higher education. . . develop a concept of the signal value of knowledge to mankind. . . acquire competence in skills of rigorous thinking. . . achieve an appreciation of the perspective, judgment, and wisdom of a liberally educated person. . . attain a higher level of creativity. . ." 36

Stout: "to introduce students to the basic areas and systems of knowledge, to instill in them a desire to examine their lives' experiences critically and to provide the tools with which to make that examination, to induce them to use the knowledge they acquire and the critical faculties they develop to pursue to depth a vocational specialty." 37

Barron: "individual has the responsibility for total self-realization, that the understanding arrived at by the individual should be contributed to the fulfillment of society, and that, this process being evolutionary, the nature of society is dynamic development." 38

Superior: "To provide a liberal education. . . programs in teacher education. . . professional and pre-professional programs. . . to render education services. . ." 39

Whitewater: "to provide teachers for the public schools. . ."[40] "The University is not engaged in making ideas safe for students; it is engaged in making students safe for ideas. . . Professor Kerr's motto for academic excellence at Whitewater. . ." 41

WSU System: "instruction of students. . . organized research. . . graduate study. . . public service. . . There will be no 'publish or perish' doctrine for the State Universities. . ." 42

Authority and purpose have little meaning until put into effect on the activity and behavior of students. We turn now to the more specific exertions of the authority of the Wisconsin State Universities over their students. In doing so, we give particular emphasis to the earliest, and the most recent rules and customs in each category.

As we have indicated, the Board of Regents did not hesitate to regulate its students, even though they were attending institutions not directly under their control! Among its earliest rules were those having to do with admission. Before being admitted to the normal department of any cooperating institution, candidates were required to make application in writing setting forth name, age, residence, desire to prepare for teaching, and intention to teach in the state for at least two years.[43] The minimum age was raised from 14 to 16 in 1858,[44] however, a few 14-year-olds and several 15-year-olds were admitted in the years that followed, indicating that exceptions could be made.[45] Today age is an admission factor only for those who have not graduated from high school or served in the armed forces, in which case they must be 21 years old or older.[46] The courts will not over-rule the reasonable admission requirements of schools, nor prohibit the provision of public education for those over the age specified in the state Constitution (20).[47]

From 1866 and until 1898, candidates for admission had to be nominated to enroll by his county or city superintendent of schools.[48] The remnant of this practice persists in the requirement of "recommendation by the high school principal or counselor that the student be admitted."[49] Also required were "two supplementary documents. . . one, signed by a physician, testified that the candidate was in sound health; the other, signed by some reliable person, attested that the candidate was of good moral character."[50] Health requirements continue in effect[51] while the principal's recommendation presumably meets whatever moral certification requirements remain.[52]

Enrollment at the Wisconsin State Universities is limited by place of origin. From 1866 to 1876 only the six best qualified students from each assembly district were admitted. In the latter year the number was raised to eight, and in 1888 the restrictions on the number of students was abandoned.[54] Indeed, the Attorney General opined that the number of Wisconsin students could not be limited, even in the face of budget shortages.[55] Enrollment of non-resident students is now limited to 25 per cent of the student body on each campus.[56]

Admission has also been contingent on passing an entrance examination administered by the president,[57] other school officials,[58] or the county superintendent.[59] "These examinations were far from easy, nor were they graded leniently, judging by the number who failed."[60] In 1916, graduates of four-year high schools were exempted,[61] however, they must now attain a certain rank in their graduating class, depending on residency, or again face an entrance exam.[62]

"Applicants who could not quite pass the tests but who, in the opinion of the faculty, would be sufficiently well-prepared to enter the normal school with a review of one term were placed in the preparatory department where tuition was free. Other applicants who in the opinion of the faculty needed more than one term to prepare for the entrance examinations were assigned to the academic department and required to pay a tuition of $.50 (later $.65 per week)."[63] The "preparatory department" lives on within the summer sessions, but is now more in the nature of a qualifying and demonstrating program.[64]

The Board resolved that Normal School funds would be provided only for the education of those who signified their intention to teach,[65] "at least two years in the state."[66] Later, to receive free tuition, the students took the following oath: "I, _____ _____, do hereby declare that my purpose in entering the state normal school is to fit myself for the profession of teaching, and that it is my intention to engage in teaching in the schools of this state."[67] Charles Brockway, one of the six graduates of the first class at Whitewater, merited a minus sign after his name in the Student Declaration Book because he only taught for two years before taking up the ministry.[68] Women who left the profession to marry were shown more leniency and understanding: "The state's investment and the training was not lost in that a normal education was very good for wives and mothers, who ultimately would have great influence on younger members of their families."[69]

Free tuition for the normal students became a casualty of rising costs and declining revenues.[70] Textbook rental fees of $1 per term[71] were followed

by laboratory fees, incidental fees, fees for special departments to cover special costs,[72] health fees,[73] and eventually even "tuition".[74] To be sure, the effect of fees is somewhat offset by a variety of student financial aid programs,[75] but the authority of the university to impose a variety of fees on students is unyielding.[76]

The universities, of course, set the calendar dates, and lengths of the terms,[77] as well as the days, times, lengths, locations, prerequisites, work assignments, clothing requirements, instructors, and examination rules for classes.[78] Cutting classes and tardiness were serious offenses in the early days, and study hours were strictly prescribed;[79] all matters which are no longer as diligently enforced.[80] The authority of colleges and universities in these areas is so universally recognized that, except for clothing[82] and attendance[83] rules, it has never been challenged in courts of record.

Curricula in the Wisconsin State Universities are established on the basis of statutory authority which can be traced back 111 years.[84] While (special) students are no longer required to follow a particular curriculum, earning a degree is contingent on doing so.[85] Originally the Board required that students pursue at least three of the following subjects: reading, spelling, analysis of words, defining, English grammar and composition, mental and written arithmetic, elementary algebra, geography, ancient and modern history, physiology, elocution, higher algebra, geometry, conic sections, trigonometry, surveying, bookkeeping, natural history and philosophy, geology, botany, chemistry, mechanics, hydrostatics, optics,

electricity, magnetism, astronomy, meteorology, rhetoric, logic, mental and moral philosophy, science of government, political economy, and elocution![86] Elementary sounds and vocal music could also be on a non-credit basis.[87] With the establishment of public normal schools in 1866 (Platteville) and 1868 (Whitewater) three curricula were offered: (1) a six-weeks institute course, (2) a two-year elementary course, and (3) a three-year advanced course.[88] Within each curriculum all students at a given institution attended the same classes, the arrangement of which was left to each president. The contemporary elective system had its beginning in 1878.[89]

Graduation required at least one year of study, attainment of age 19,[90] and the passing of written examinations, from which those students "whose general character and deportment was such as to make them unfit for teachers" were excluded.[91] The Board believed in exams: The normal school fund "should not be wasted or frittered away by encouraging the formation of classes where such instruction is inefficiently given, or totally neglected and the Board can find no rule more just than that which makes the standard of scholarship as exhibited in these examinations the criterion. . .[92]" Only Eau Claire and Oshkosh now require the taking of comprehensive final (Graduate Record) examinations.[93] The age criterion has been dropped and the residence requirement reduced to one semester, while the familiar major and minor system has been added.[94] The authority of colleges and universities to establish curricula and set degree requirements, included examinations, though seldom challenged, has been sustained in the courts,[95] and

as a general rule, "a court will not interfere in matters committed to the discretion of a college faculty, except upon evidence of malice, fraud, or caprice."[96]

The extra-curricular and co-curricular[97] activities of students, from housing to smoking, sports,[98] and courtship, have also come under the authority of the Universities. Until quite recently, all students were required to live in rooming houses, boarding places, or private homes approved and inspected (without warning) by the school.[99] As stated in Whitewater's first Catalogue:

> "All necessary supervision will be held over the habits and deportment of the pupils in their boarding houses. They will be held to a strict account for the keeping of study hours, and no calls will be allowed during the time set apart for this purpose. No ladies of the Normal School will be allowed to receive calls from gentlemen after 6 o'clock in the evening, or to ride or walk with them without permission from the Principal.
>
> Such rules of upright ladylike and gentlemanly deportment will be given to the pupils as will tend to their growth in moral excellence and in that cultivation of manners which may place them as models before their pupils when they are called to teach. All pupils are expected to yield ready obedience to the regulations of the school, as it is self-evident that no others are suitable candidates for the work of teaching." 100

The University of Wisconsin, "feared by many to be a 'godless institution' which hopefully would be balanced by the more pious normals,"[101] adopted somewhat analogous rules at its first faculty meeting September 22, 1851.[102] A student who had attended Whitewater in 1875 reminisced that when a "young man desired to call upon a lady, or escort one to a lecture, he must wait (sic) upon the preceptress, state his wish, the time, and the young lady's name. Imagine how long a bashful young man would hesitate before he faced

the chance of two refusals, that of the lady and that of Mrs. Arey." (wife of the president and first preceptress).[103]

Normal school students at River Falls were urged to "attend regularly to sleep, diet, ablution, and exercise,"[104] and ladies at Whitewater turned in "record cards on rising, retiring, studying, care of the teeth, bathing, visiting, etc."[105] The Platteville authorities, at the other extreme, believed that detailed rules and regulations on student discipline and conduct were unnecessary.[106] A visiting committee, however, felt that what it labeled the "Do Right" policy at Platteville was inadequate and urged that a written code of rules and regulations be adopted.[107] Controversy over codes of conduct and appropriate specificity of rules continues.[108] The most recent student conduct code (see Appendix B), as well as the state statutes, contains some rather general language.[109] The courts, having interpreted such inexact phrases as "general welfare", "due process", and "free speech", will not be daunted by "misconduct."[110]

Rules against profanity, smoking, liquor, gambling, and dancing covered both on and off-campus behavior.[111] "But the young people of that day did not seem to mind and somehow throughout their entire history the normal schools were fortunate in attracting the more serious minded from among prospective students." Those who entered the normal schools came for the definite purpose of preparing to teach. "They came to learn and with rare exceptions made the most of their opportunities."[112]

Concerning one of those exceptions, a parent wrote:

> "We have reports from there he has been out nearly every night during the time he should be in his room, and that the boys met in his room and smoked and played cards. . . These things

> I consider is (sic) the cause of his failure. Now the reason I sent my boy to Whitewater was I understood that the boys were looked after. . . Harold was sent to you a good clean boy, had no bad habits whatsoever, when he left me. And I trusted him to your care. . . I think it is the duty of the faculty to look after the boys and girls that are away from their parents influence." 113

In loco parentis was not merely a quaint Latin phrase in those days.[114] Recent authoritative opinion holds that the principle in loco parentis is limited to minors and should no longer apply in state universities.[115]

"When a student enters Wisconsin State University (Stevens Point, 1967), it is taken for granted. . . that he has an earnest purpose. . . that his conduct will bear out this presumption. . ."[116] and that he will "respect the regulations of the institution faithfully and cheerfully" (Whitewater, 1875).[117] Nonetheless, chaf sometimes slipped through the admissions screen. "In the first (Whitewater) catalog the following statement appeared under the heading EXPULSIONS: 'Orvis C. Flanders and Minerva Richmond have been expelled for exhibiting traits of character unworthy of a teacher.' Whether or not Orvis and Minerva were collaborators in the same crime can only be surmised. . ."[118] At Platteville "a boy just growing into manhood was expelled because his pockets smelled of tobacco and on some investigation it was found that he was a smoker and user of tobacco."[119] The courts have said that students can be, and occasionally are, expelled for absenteeism,[120] misappropriation,[121] giving false testimony,[122] moral unfitness,[123] failure in scholarship,[124] selling examinations,[125] persistent contentiousness and contumacy,[126] cheating,[127] using filthy speech,[128] and improper conduct off campus (if it affects the institution directly in matters of discipline).[129]

The authority and inherent general powers of the university to maintain order on campus and to exclude therefrom those who are detrimental to its well being,[130] though seemingly unassailable, must be exercised with regard to "due process",[131] but the university need not, because it cannot, constitute itself a court.[132]

Finally, the Wisconsin State Universities exercise authority over their students in connection with the control of parking space and other physical facilities.[133] In the latter case, student organizations are required to pay rent or secure a charter. President Samual G. Gates recently denied a charter (i.e., the free use of the institution's facilities) to the La Crosse chapter of Students for a Democratic Society, and was sustained in that action by the Regents.[134] Michael Saxton and Dennis O'Keefe, of La Crosse S.D.S., subsequently brought suit against the Board of Regents, contending that they and other student members of S.D.S. had been denied the equal treatment ("equal protection of the law," in legal parlance) guaranteed by the 14th Amendment to the United States Constitution.[135] The question which presumably will be decided in this case, if it survives challenges and counter challenges on technical grounds, will not be whether the University president has authority to deny a charter, he clearly has not only the right but the duty to exercise his discretion in such matters, but whether President Gates acted arbitrarily, capriciously, unreasonably, or in a manner which unnecessarily limited constitutionally-guaranteed freedoms; i.e., whether he based his decision in this case on distinctions which were real or fancied.[136]

Has the university authority over students been, and is it now being, exercised in conformity with the purposes and objectives of the universities? Eschewing the academic perogative and penchant for carping criticism and destructive discretion, I make bold to answer in the affirmative. To be sure, students have from time to time disagreed. We've seen colossal snowball fights,[137] threatened mass withdrawals,[138] student newspaper rebellions,[139] spring beer riots,[140] and recently the most serious Saxton case. However, by and large, the State Universities have served Wisconsin well. Those very important decisions of Wisconsin's people, recorded not merely in word but in deed, overwhelmingly endorse the Universities' ends and means: (1) each year an increasing proportion of Wisconsin's high school graduates have enrolled, until now more attend the State Universities than all other institutions of higher education, public and private, in-state and out-of-state, combined;[141] (2) financial support has grown each year, through the current biennium for which the State Legislature granted a higher percentage of budgetary increase (27%) than that provided to any other institution of higher education in the country;[142] (3) for almost 110 years, prior to President Gates' decision, no student felt sufficiently agrieved.

by the exercise of university authority to seek relief in a court of record.

NOTES

1. Board of Regents of State Colleges, Proceedings, May 22, 1964, Resoltuions 2233 and 2234.

   State of Wisconsin Senate Bill 55, (1967), Section 31, page 40, lines 28-30.

2. Board of Regents of Normal Schools, Proceedings, April 17, 1951, Resolution 609, and July 10, 1951, Resolution 654.

   State of Wisconsin Assembly Bill 684, (1951).

   Wisconsin State Statutes, 1965, Chapter 37, Section 1.

3. Board of Regents of Normal Schools, Proceedings, July 20-21, 1926, Resolution 71, pages 15-16.

4. General Laws of the State of Wisconsin, 1857, Chapter 82, Section 2, page 94, and Section 14, page 98.

   General Laws Passed by the Legislature of Wisconsin, 1866, Chapter 116, Section 1, page 160.

5. Constitutions, laws, statutes, rules, regulations, and principles are subject to varying interpretation until supported and confirmed by judicial decision. The court cases cited here and in the notes which follow are a guide to the decisions relevant to the matters discussed in the text.

   Sullivan v. Board of Regents of Normal Schools, 209 Wis. 242, 244 N.W. 563 (1932).

   State ex. rel. Public Service Commission of Montana v. Brannon, 86 Mont. 200, 283 P. 202, 67 A.L.R. 1020 (1929).

   Goldberg et. al. v. Board of Regents of the University of California, 57 Cal. Rptr. 463 (1967).

6. General Laws, 1857, Chapter 82, Section 2, page 94, and Section 14, page 98.

7. General Laws, 1857, Chapter 82, Section 4, page 94.

8. General Laws, 1866, Chapter 116, Section 1, page 160.

9. Gitlow vs. New York, 268 U.S. 652 (N.Y. 1925).

   West Virginia State Board of Education vs. Barnette, 319 U.S. 624, 63 Sup. Ct. 1185 (1943).

David Fellman, The Supreme Court and Education, (New York: Columbia University, 1960), page xiii.

Cooper vs. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (Ark. 1963).

Davis vs. East Baton Rouge Parish School Board, 214 F. Supp. 624 (La. 1963).

10. United States Constitution, Amendment X.

11. Wisconsin State Constitution, Article IV.

City of Manitowoc vs. Town of Manitowoc Rapids, 285 N.W. 403 (Wis. 1939).

The People ex. rel. Fernando Wood vs. Simeon Draper, 15 N. Y. 532 (1857).

Breckinridge et. al. vs. County School Board, 135 S. E. 693 (Va. 1926).

Board of Education of City of Chicago vs. Upham, 191 N. E. 876, 94 A. L. R. 813 (Ill. 1934).

City of Newport News vs. Elizabeth City-County, 55 S. E. 2d 56 (Va.1949).

State vs. Van Landugt, 359 S. W. 2d 773 (Mo. 1962).

Bushnell vs. Beloit, 10 Wis. 155 (1860).

Wisconsin C. R. Co. vs. Taylor County, 52 Wis. 37 (1881).

Outagamie County vs. Zuehlke, 165 Wis. 32 (1917).

State ex rel. Carnation M. P. Co. vs. Emery, 178 Wis. 147 (1922).

Silver City Consolidated School District vs. Board of Regents, 401 P. 2d 95 (N. M. 1965).

De Jonge vs. School District, 139 N. W. 2d 296 (Neb. 1966).

12. Board of Education of State of Illinois vs. Bakewell, 10 N. E. 378 (Ill. 1887).

13. State Female Normal School vs. Auditor, 79 Va. 233 (1884).

14. General Laws, 1857, Chapter 82, Section 4, page 94, and Section 15, page 98.

C. J. S., Colleges and Universities, 1351.

15. State ex. rel. Burpee vs. Burton, 45 Wis. 150 (1878).

King vs. Jefferson City School Board, 71 Mo. 628 (1880).

State ex. rel. Priest vs. Regents of the University of Wisconsin, 54 Wis. 159 (1882).

Wilson vs. Board of Education of Chicago, 233 Ill. 464, 15 L.R.A. (N. S.) 436, 48 N. E. 697 (1908).

Eliott vs. University of Illinois, 365 Ill. 338, 6 N. E. 2d 647 (1936), Rehearing denied, 302 U. S. 774 (1937).

Ward vs. Scott, 93 A. 2d 385 (N. J. 1952).

Schreiber vs. County Board of School Trustees, 198 N. E. 2d 848 (Ill. 1964).

Latham vs. Board of Education, 201 N. E. 2d 111 (Ill. 1964).

Board of Education vs. Page, 211 N. E. 2d 381 (Ill. 1965).

16. General Laws, 1866, Section 6, page 163.

Wisconsin State Statutes, 1965, Chapter 37, Section 11 (10).

Board of Regents of State Universities, By-Laws, February 1, 1968, Chapter V, Section 5.10, page 4; and Chapter VII, Section 7.10, pages 4-6.

Board of Regents of State Universities, Proceedings, March 10, 1967, "The Place of the President," pages 6 & 7.

Dritt vs. Snodgrass, 66 Mo. 286, 27 Am. Rep. 343 (1877).

Englehard vs. Serena, 318 Mo. 263, 300 S. W. 268 (1927).

Kieval vs. Wilson, 285 App. Div. 1203, 140 N. Y. S. 2d 756 (1955).

17. State ex. rel. Burpee vs. Burton, 45 Wis. 150 (1878).

Sheehav vs. Sturges, 2 Atl. 841, (Conn. 1885).

Deskins vs. Gose, 85 Mo. 485, 55 Am. Rep. 387 (1885).

Union Pac. R. R. vs. Chicago R. I. & P. R. R., 163 U. S. 564 (1896).

State vs. Randall, 79 Mo. App. 226 (1898).

Worzella vs. Board of Regents of Education, 93 N. W. 2d 411 (S. D. 1958).

18. Although the Board of Regents was constituted in 1857, the first state normal school (Platteville) was not opened until 1866. In the meantime the Board provided funds (and regulations!) for normal departments established and maintained within private academies, colleges, and universities as well as within public high schools. See Chapter II in William Harold Herrmann, The Rise of the Public Normal School System in Wisconsin, an unpublished doctoral dissertation (University of Wisconsin, 1953), 559 pages.

    Also see Richard D. Gamble, From Academy to University, A History of Wisconsin State University-Platteville, (Platteville: Wisconsin State University, 1966), pages 85 & 96.

19. Ellis Baker Usher, Wisconsin: Its Story and Biography 1848-1913, (New York: Lewis, 1914), p. 396.

20. William H. Herrmann, The Rise of the Public Normal School. . ., pp. 22-23.

21. John Hawkins Rountree quoted in the Journal of the Proceedings of the Convention of 1847-48, (Madison: The Convention, 1848), p. 334.

22. Goldberg et. al. vs. The Regents of the University of California, 57 Cal. Rptr. 463 (1967).

23. General Laws, 1857, Chapter 82, Section 9, page 96; and Section 15, page 98.

    General Laws, 1886, Chapter 116, Section 4, page 162.

    Statutes, 1965, Chapter 37, Section 9.

24. Laws of Wisconsin, 1875, Chapter 5, Section 2, page 11.

    Statutes, 1965, Chapter 37, Section 9.

25. General Laws, 1866, Chapter 116, Section 4, page 162.

    Statutes, 1965, Chapter 37, Section 9.

26. General Laws, 1866, Chapter 116, Section 4, page 162.

27. Wisconsin Session Laws, 1911, Chapter 631, Section 9 (10), page 836.

    Statutes, 1965, Chapter 37, Section 12 (1).

28. Wisconsin Session Laws, 1955, Chapter 37, Section 11, pages 56 & 57.

    Statutes, 1965, Chapter 37, Section 12 (2) & (3).

29. Wisconsin Session Laws, 1935, Chapter 397, Section 2, page 609.

Statutes, 1965, Chapter 37, Section 29.

30. Wisconsin Session Laws, 1925, Chapter 114, Section 1, pages 172 & 173.

Statutes, 1965, Chapter 37, Section 30.

31. Wisconsin State University-Eau Claire, Catalog, 1967-68, page 5.

32. Wisconsin State University-La Crosse, General Catalog, 1966-68, pp. 23-24.

33. Wisconsin State University-Oshkosh, Undergraduate Catalog, 1967-68, p. 6.

34. Wisconsin State University-Platteville, General Catalog, 1968-70, p. 31.

35. Wisconsin State University-River Falls, Bulletin, Catalog for 1967-69, p. 4.

36. Wisconsin State University-Stevens Point, Catalog, 1967, pp. 4 & 5.

37. Stout State University, Regular Session Bulletin, 1966-68, p. 41.

38. Barron County Campus, Stout State University, Bulletin of Regular Sessions, 1967-69, p. 6.

39. Wisconsin State University-Superior, General Catalog, 1967-68, p. 6.

40. Wisconsin State University-Whitewater, Bulletin, Catalog 1967/68, p. 7.

41. M. Janette Bohi, A History of Wisconsin State University-Whitewater 1868 - 1968, (Whitewater: Whitewater State University Foundation, 1967), pp. 201 & 255.

42. Board of Regents of Wisconsin State Universities, Toward New Horizons, (Madison: The Board, 1967), pp. 14 & 15.

43. Board of Regents of Normal Schools, Proceedings, April 11 & 12, 1860.

44. William H. Herrmann, The Rise of the Public Normal School System. . ., p. 60.

Also see Robert Doyle, Counselor's Handbook, (Madison: Wisconsin State Universities, 1967), p. 4.

45. M. Janette Bohi, A History . . ., p. 38.

46. Proceedings, March 10, 1967.

Statutes, Chapter 37, Section 11 (7).

47. Manitowoc vs. Manitowoc Rapids, 285 N. W. 403 (Wis. 1939).

State vs. Board of Education, 27 N. E. 2d 496 (Ohio 1940).

48. William H. Herrmann, The Rise of the Public Normal School..., pp. 233-335.

49. Proceedings, March 10, 1967.

50. William H. Herrmann, The Rise of the Public Normal School..., p. 335.

51. Richard D. Gamble, From Academy to University. . ., P. 227.

Platteville, General Catalog, p. 38.

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APPENDIX A

(From Board of Regents of Wisconsin State Universities Proceedings, March 10, 1967, pages 6 and 7)

Regent Dixon presented a statement on THE PLACE OF THE PRESIDENT. Mr. Dixon explained that the preparation of the paper came about as a result of a discussion at the last Board meeting with reference to demonstrations and the need for a procedural outline. This lead Mr. Dixon to believe it would be wise to interpret for the layman as well as for the Board what the by-laws mean with regard to the line of authority and the position of the president. Regent Neshek moved that Mr. Dixon's statement be recorded in the minutes. The motion was seconded by Regent Christianson and was adopted by unanimous roll call vote. The statement follows:

THE PLACE OF THE PRESIDENT

The Board of Regents appoints as Presidents of the State University system men of educational stature; men whose academic qualifications combine with practical experience; men with proven administrative ability; men with broad interests in people and civic life; and, above all, men of character, courage, and loyalty.

In these Presidents is vested extensive operational authority and its accompanying responsibilities.

The President of a State University functions in behalf of his faculty, his students, the mothers and fathers of his students, and the taxpayers of the State of Wisconsin.

The President must exercise judgment and objectivity in interpreting the policies originally determined by the Board of Regents. He knows that it is the privilege of the Board of Regents to question decisions and to insist that wisdom and discretion be employed; this privilege is inherent in his employment "at the pleasure of" the Board. By the same token, the President knows that it is his privilege to seek counsel and assistance from the Board when "shadow zone" situations or controversies occur.

The Board of Regents is morally obligated to the President of a university under its jurisdiction to provide complete support for him in the exercise of the authority it has vested in him. Without this support, administrative and faculty morale would soon disappear. Progress could not be made, nor respect maintained. If the dignity and integrity of an administrator cannot be upheld, the Board of Regents would be remiss in retaining him in a position of top leadership.

Appendix A

A wholesome atmosphere for living and learning must exist on a campus if the educational process is to be successfully implemented.

In the final analysis, the Board of Regents relies upon the Presidents to determine the desirability of any and all school activities, whether they be social, athletic, aesthetic, or political.

Entrusted to the care of the chief administrator of an educational institution are thousands of young men and women in their formative time of life. They are volatile, impressionable, vacillating, physically and mentally mature, but often emotionally immature. In word, they need guidance. They also need motivation and inspiration in a world which is currently portrayed to them as cynical and materialistic.

No organization, no individual, can be allowed to interfere with the orderly operation of a State University. The President must be the decision-maker, guided by his experience and conscience, and responsible only to the Board of Regents.

APPENDIX B

(From By-Laws of the Board of Regents of Wisconsin State Universities, February 1, 1968, pages 4-6)

Chapter VII

Student Conduct

7.10 Although the Wisconsin State University system is committed to the full support of the constitutional rights of its students, including due process in student disciplinary matters, it also has an equal obligation to protect its educational purpose and the interests of its student body. Each university must, therefore, at all times be concerned with the actions of individuals or groups that are in conflict with the welfare and integrity of the institution or in disregard of the rights of other students or faculty. Students and student groups are expected to cooperate in avoiding conduct which is thus prejudicial to the university or its students.

The State of Wisconsin extends the benefits of admission to its institutions of higher education to those persons who meet certain academic qualifications and standards of health, character and prior conduct. Admission to a university confers benefits beyond those available to all citizens, but commensurate with these are additional responsibilities.

When a student enters the Wisconsin State University system, it is assumed that he has serious purpose and a sincere interest in his own social and intellectual development. He is expected to learn to cope with problems with intelligence, reasonableness, and consideration for the rights of others; to obey laws and ordinances of the nation, state, and community of which he, as well as his university, is a part; and to conduct himself peaceably in espousing changes he may consider necessary. As he prizes rights and freedoms for himself, he is expected to respect the rights and freedoms of others.

Students are subject to federal, state, and local laws as well as university rules and regulations. A student is not entitled to greater immunities or privileges before the law than those enjoyed by other citizens generally. Students are subject to such reasonable disciplinary action as the president of the university may consider appropriate, including suspension and expulsion in appropriate cases, for breach of federal, state, or local laws or university rules or regulations. This principle extends to conduct off campus which is likely to have adverse effect on the university or on the educational process or which stamps the offender as an unfit associate for the other students.

Appendix B

The Universities recognize the right of the individual student or of student groups to disagree with national, state, local, and administrative or faculty policies and positions. Students have the right, furthermore, to express their disagreement on issues which have captured their interest, and to assemble peaceably for that purpose, subject to reasonable restrictions as to place and time.

However, the following actions, among others, are specifically prohibited:

a. Interference with accepted functions or activities of the university or with its educational or service programs, either by breach of the peace, physical obstruction or coercion, or by noise, tumult or other disturbance.

b. Unauthorized occupancy of university facilities or blocking access to or from such areas.

c. Interference with approved university traffic (pedestrian or motor vehicle).

d. Infringement of the rights of students, faculty, staff, and/or other authorized persons to gain access to any university facility for the purpose of attending classes, participating in interviews, university conferences and/or other university activities.

e. Picketing, or demonstrating, with the use of obscene or indecent language, or with signs or banners containing such language or of such size, material, or construction as to create a hazard to persons or property.

While this by-law is applicable to all of the State Universities, the Board of Regents recognizes that there are appreciable differences in tradition, environment, mission, clientele, and institutional character. Accordingly the president of each university is authorized to establish such additional rules and regulations for student conduct, consistent with the by-laws of the Board of Regents, as he may determine to be appropriate for the needs of the university.

Power is hereby conferred upon the president of each state university to suspend or expel students for misconduct, and for such other causes as may be prescribed from time to time in these by-laws.

Without limiting its generality by specification, the term "misconduct" as herein used shall include violation on campus of federal, state, or local law or by-laws of the Board of Regents of State Universities or university by-laws, rules or regulations, including the prohibitory provisions of this by-law; and also violations of such laws, by-laws, rules

or regulations occuring off campus which are likely to have an adverse effect on the university or on the educational process carried on at the university or which stamp the offender as an unfit associate for the other students.

A student charged with conduct which may subject him to substantial disciplinary action should of course be afforded reasonable notice of the offense with which he is charged and the general nature of the evidence on which the charge is based, a reasonable opportunity to prepare and present any defense he may have, an adequate and fair hearing, and generally, procedural due process of law. He should be dealt with fairly in all respects; and the severity of the discipline when guilt is established should be reasonably commensurate with the gravity of the offense. If in any case the president shall determine that the best interests of the university or of the other students require it, the president may suspend the accused student temporarily, pending prompt determination as to his guilt.

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Documents and Legal Reports

The alpha and the omega of authority in the Wisconsin State Universities rests in the documents. The United States and Wisconsin State Constitutions; the Laws, General Laws, Session Laws, and Statutes of the State of Wisconsin; the Proceedings and Reports of the Board of Regents of Normal Schools, State Teachers Colleges, State Colleges, and State Universities; and the catalogues of the institutions; taken together provide the written source of authority. Fortunately all of these documents are preserved, well indexed, short, and sufficiently annotated to be easily understood. In a deeper sense, however, the law is devoid of genuine meaning until it has been acted upon, and those actions have been reviewed in the courts. The organization of the reports of courts of record is beautiful in its simplicity. Though many of the reports are verbose, obscure, and pedantic, they, like the constitutions and statutes, have been lucidly annotated for lay use.

Secondary Sources

The outstanding history of an American institution of higher learning is:

> Merle Curti and Vernon Carstenson, The University of Wisconsin: A History 1848-1925, (Madison: University of Wisconsin Press, 1949), Volume I, II.

Indeed these volumes provide the standard against which others are measured. Not only do they write in a highly readable style, but Curti and Carstenson carefully avoid the biases usually found in histories written by employees. Comments on the Wisconsin State Normal Schools, though only coincidental to their main concern, are accurate and completely fair in setting and tone.

The best history of the State Universities is:

> William Harold Herrmann, The Rise of the Public Normal School System in Wisconsin, an unpublished doctoral dissertation (University of Wisconsin, 1953), 559 pages.

Herrmann, though not as polished as his master (Curti), presents a well-documented narrative, sometimes from the perspective of those making educational policy for the state, sometimes from the student's point of view.

Two recent institutional histories are also worthy of note:

> M. Janette Bohi, A History of Wisconsin State University-Whitewater 1868-1968, (Whitewater: Whitewater State University Foundation, 1967).
>
> Richard D. Gamble, From Academy to University, A History of Wisconsin State University-Platteville, (Platteville: Wisconsin State University, 1966).

Both include colorful local detail on the early history of their institution but lose their objectivity as the contemporary period is approached. Bohi's understanding of the relationships between the Board of Regents and the presidents is shallow, if it exists at all. She gives no indication, for instance, that she really knows why Presidents Arey, C.M. Yoder, and Wyman left Whitewater. Gamble is less readable as Bohi, and at time becomes unashamedly sentimental.

The leading publications on college law are:

> Thomas Edward Blackwell, College Law, (Washington: American Council on Education, 1961), ix and 347 pages.
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> Edward C. Elliott and M. M. Chambers, The Colleges and the Courts, (New York: Carnegie Corporation, 1936), x and 563 pages.
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Blackwell writes as an administrator, for administrators of private colleges. His business approach and emphasis is leavened with short notes on the history and sources of certain legal principles. Chambers provides briefs on all judicial decisions of record regarding institutions of higher education in the United States 1805-1966. Unfortunately, his treatment of the principles and development of law is weak.